

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
B & M FOOD STORES, INC., )  
 )  
Appellant, )  
 )  
v. )  
 )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
 )  
Respondent. )

PCHB No. 1047

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter is an appeal of a \$50.00 civil penalty for an alleged opacity violation of respondent's Section 9.03 of Regulation I. Hearing was held before the Pollution Control Hearings Board, William A. Harrison, Hearing Examiner, presiding alone at Seattle, Washington on November 15, 1976.

Appellant, B & M Food Stores, Inc., appeared by and through its attorney, Alan Butterfield. Respondent appeared by and through its attorney, Keith D. McGoffin. Olympia court reporter Eugene E. Barker provided reporting services.

1 The Board having considered the exhibits, records and files herein  
2 and having reviewed the proposed Findings of Fact, Conclusions of Law and  
3 Order of the presiding officer, and the presiding officer having served  
4 said proposed Order upon all parties herein by certified mail, return  
5 receipt requested, and twenty days having elapsed from said service; and

6 The Board having considered exceptions from the appellant, said  
7 exceptions being granted, the Pollution Control Hearings Board makes the  
8 following

9 FINDINGS OF FACT

10 I

11 The Pollution Control Hearings Board has jurisdiction over the  
12 persons and subject matter of this appeal.

13 II

14 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
15 a certified copy of its Regulation I containing respondent's regulations  
16 and amendments thereto. Official notice of said Regulation I is hereby  
17 taken.

18 III

19 The emission source here in question is an incinerator located  
20 behind appellant's (B & M) grocery store in Marysville. It is of a  
21 type approved by respondent (PSAPCA). B & M was the owner of this  
22 incinerator at all times relevant to this appeal.

23 IV

24 The incinerator has gas and water controls which are used in burning  
25 The gas burner should be started 20 minutes before burning to allow  
26 proper incineration.

27 FINAL FINDINGS OF FACT,  
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V

On June 14, 1976 respondent's inspector observed a black emission coming from appellant's incinerator stack. He recorded emissions ranging from Ringelmann 2 to 2-1/2 for a period of ten consecutive minutes. Immediately following his observation, the PSAPCA inspector entered the premises of B & M grocery store and engaged in conversation with the Assistant Manager, who had been on the premises since 6:30 a.m. that morning. The Assistant Manager was unaware of any burning, had not directed any burning and stated that the store's burning is customarily done in the nighttime between 10:30 p.m. and 1:00 a.m. Such burning was done by the night shift which left the premises around 8:30 a.m. that morning.

VI

The PSAPCA inspector and Assistant Manager next inspected the incinerator together and found:

- (a) No fire or emissions.
- (b) Smoldering pieces of wood.
- (c) Gas burner and water controls turned off, indicating that the fire was set by hand.

VII

B & M employees are well versed on operation of the incinerator and are directed always to use the gas and water controls.

VIII

The incinerator is accessible by anyone, from the parking lot at the rear of the B & M grocery. On prior occasions persons unbeknownst to appellant had set fires in the incinerator.

FINAL FINDINGS OF FACT,  
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IX

B & M has now installed a chain and lock to prohibit access to the incinerator to all but B & M employees.

X

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

Section 9.03 of PSAPCA Regulation I makes unlawful the actions of those who "cause or allow," prohibited emissions.

II

Because of its prior awareness of persons setting fires in its incinerator, and appellant having failed to prevent same, it is thereby deemed to have violated Section 9.03 by allowing the emissions in question. B & M has now taken responsible action by locking its incinerator to prevent future unauthorized use.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

ORDER

The \$50.00 civil penalty is affirmed, provided however, that the entire civil penalty is suspended on condition that appellant not violate respondent's regulations for a period of six months after this

FINAL FINDINGS OF FACT,  
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1 Order becomes final.

2 DATED this 18<sup>th</sup> day of January, 1977.

3 POLLUTION CONTROL HEARINGS BOARD

4 Art Brown

5 ART BROWN, Chairman

6 W. A. Gissberg

7 W. A. GISSBERG, Member

8 Chris Smith

9 CHRIS SMITH, Member

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27 FINAL FINDINGS OF FACT,  
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CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 18<sup>th</sup> day of January, 1977, to each of the following-named parties at the last known post office addresses, with the proper postage affixed to the respective envelopes.

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LARENE BARLIN  
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,  
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AND ORDER